Saskatchewan Financial Services Commission
Pensions Division

TERMINATION OF A PENSION PLAN

Introduction

The termination of a pension plan that is registered in Saskatchewan involves certain specific filing requirements and procedures. These are, for the most part, outlined in Part VII of *The Pension Benefits Act, 1992*.

This bulletin has no legal authority. *The Pension Benefits Act, 1992* and *The Pension Benefits Regulations, 1993* should be used to determine specific requirements.

Total Plan Termination

Pursuant to section 51 of *The Pension Benefits Act, 1992*, a pension plan terminates when:

1. the Superintendent of Pensions refuses to register the plan or cancels the registration of the plan;

2. an employer fails to make contributions to the plan,

3. the superintendent declares a termination because an employer has discontinued, or is about to discontinue, its operations, or

4. the administrator decides to terminate the plan, provided the administrator has the authority to do so.

Employer contributions are deemed to have ceased if they have not been remitted to the fund holder within the time periods prescribed in section 37 of *The Pension Benefits Regulations, 1993*, and the superintendent considers that the employer does not intend to make the contributions and so notifies the employer.

Employer contributions are not deemed to have ceased to the extent that surplus assets are used to provide employer contributions. This is commonly known as a contribution holiday. A contribution holiday is allowed if:

1. a plan permits that use of surplus assets,

2. the intention of the employer to do so is disclosed to the members and former members in the manner described by section 41 of *The Pension Benefits Regulations, 1993*, and

3. the superintendent has approved that use of surplus assets.

Failure of an employer to make contributions pursuant to a multi-employer plan does not result in the termination of the plan.

The administrator of a plan means either the employer or a board of trustees or similar body specified in the plan to be the administrator.

As well, a plan is not terminated, unless so ordered by the superintendent, if the members of the plan immediately become members of another plan. In that situation, years of continuous employment under the second plan count as years of continuous employment under the first plan.

Partial Plan Termination

A partial plan termination occurs under the Act when employer contributions cease for a specific and identifiable class or group of plan members or where an employer has discontinued or is about to discontinue part of its business operations.

Some examples of a specific and identifiable class or group of plan members are:

1. all salaried employees, all union members, all management employees, etc. (refer to section 25 of *The Pension Benefits Regulations, 1993*),

2. all members at the Moose Jaw warehouse of the employer, or

3. all cleaning and laundry staff at the institutions in a health district.

The number of members involved is not a factor in determining whether a partial plan termination has occurred. For example, if a store that employs only one plan member closes, a partial plan termination is deemed to occur.

On a partial plan termination, the pensions and other benefits affected by the partial termination cannot be less than they would have been if the whole of the plan had been terminated.

Disposal of Business

Total or partial termination of a pension plan occurs when all or a part of a business is sold for those members whose employment is terminated as a result of the sale. It also occurs for other plan members if:

1. the successor employer has no pension plan which the members may join,

2. the successor employer's pension plan is voluntary and some members choose not to join, or

3. the successor employer has a pension plan which the members must join, but the successor employer does not wish to assume the liability for the predecessor plan benefits, and the predecessor employer wishes to wind-up the plan as it relates to the accrued benefits of the affected members.

The Termination Process

There are eight steps in the termination process:

1. Notice of termination,
2. Final remittance of contributions,
3. Preparation of the Termination Report,
4. Filing of required documentation,
5. Approval,
6. Disclosure,
7. Distribution of assets, and
8. Filing of Termination Return.

The following description of each step applies equally to both total and partial plan termination unless stated otherwise. Please note that no assets may be distributed on the termination of the plan until the approval of the superintendent has been given.

Step 1 - Notice of Termination

Where the administrator is party to the decision to terminate a plan, the administrator must notify the superintendent, in writing, of that fact immediately after deciding to terminate the plan.

An administrator must provide to each member and former member a notice with respect to the termination:

1. at least 60 days before the proposed termination date, or

2. if it is intended to terminate the plan less than 60 days after the decision is made, immediately after the date that the decision is made.

Step 2 - Final Remittance of Contributions

Within 30 days after the effective date of termination, the employer must remit to the pension fund holder, all outstanding employee contributions plus all employer contributions required by the terms of the plan or the Act with respect to benefits accrued to the date of termination.

Step 3 - Preparing the Termination Report

The termination report must include the following items:

1. the market value of plan assets as of the date of termination;

2. the total value of plan liabilities at the date of termination, and a description of the assumptions and methods used to determine the value;

3. the total surplus/deficit in the plan as of the date of termination and a description as to how it will be dealt with;

4. the nature of the benefits to be provided (i.e., annuities purchased for pensioners, confirmation of portability for locked-in members, treatment of deferred vested members, etc.);

5. a list of all active plan members which includes each member's:

   (a) name,

   (b) date of birth,

   (c) date of hire,

   (d) value of employee required contributions, if any,

   (e) value of employer required contributions (defined contribution provisions only),

   (f) amount of the accrued monthly pension (defined benefit provisions only),

   (g) commuted value of the accrued pension (defined benefit provisions only),

   (h) excess employee contributions, if any (contributory defined benefit provisions only),

   (i) value of employee additional voluntary contributions, if any,

   (j) the rate of interest to be paid on the benefits from the date of termination to the date that benefits are paid to the members,

   (k) confirmation of 100% vesting for all members, and

   (l) for members employed in other provinces, any additional information related to plan termination which is required by the relevant pension legislation of those additional provinces;

6. a list of all vested deferred members and pensioners who continue to have an entitlement under the plan, which includes each such member's:

   (a) name,

   (b) accrued pension, and

   (c) if deferred vested members are being given portability, the value of employee contributions, and the commuted value of the pension (defined benefit provisions), or the value of employee and employer contributions (defined contribution provisions);

7. the reason for terminating the plan; and

8. confirmation that there is no continuing pension plan for the plan members, or, if there is, that plan's registration number and province of registration.

Treatment of a Deficit

Where a plan's assets are insufficient to fund the plan's accrued benefits at termination, the report must outline how assets will be allocated. The priority of allocation as required by section 39 of *The Pension Benefits Regulations, 1993*, is as follows:

1. assets must be allocated first to provide for benefits equal to the value of contributions, with interest, made by and transferred from another plan with respect to members and former members;

2. if assets remain after the first allocation, they must be allocated to provide for accrued benefits with respect to which no unfunded liability exists, and

3. if assets remain after the second allocation, they must be allocated to provide for accrued benefits with respect to which unfunded liabilities have not been amortized at the date of the termination of the plan.

An unfunded liability that has not been amortized at the date of the termination has the effect of reducing the benefits for employment that led to the establishment of the unfunded liability, proportionate to the extent to which those benefits remain unfunded. Each unfunded liability must be dealt with separately and applied only to the benefits with respect to which it was established.

If the plan has insufficient assets, but has no unamortized unfunded liabilities that can be associated with accrued benefits, then all accrued benefits, including those in payment, must be reduced on a proportionate basis. The interests of one person entitled to benefits cannot be preferred over the interests of any other person so entitled.

Treatment of a Surplus

Where there is a surplus in the plan at termination, and any of the surplus is to be allocated to the members, the method of allocation, and the individual amount of allocation must be included in the termination report.

Where there is a surplus in the plan at termination, and the employer intends to seek notice under Section 62(c) of the Act for a surplus refund, the procedures outlined in Section 41 of the Regulations must be followed.

If the request for notice will delay the termination of the plan, due to the need for a legal determination of relevant plan wording, approval may be requested for proceeding on the distribution of assets with respect to that portion of the plan relating to accrued benefits, and a delay in the termination with respect to the plan surplus.

Authority to Sign a Termination Report

The termination report must be signed by:

1. a Fellow of the Canadian Institute of Actuaries,

2. in the case of an insured plan, any person so authorized by the insurance company, and

3. in the case of a plan that consists solely of defined contribution provisions, a representative of the fund holder who is so authorized by that fund holder, by the administrator, or any other person approved by the superintendent.

Step 4 - Filing of Required Documents

The documents normally required to terminate a pension plan include the termination report, an executed plan amendment and/or Board Resolution or a letter from the employer terminating the plan, and an Annual Information Return and filing fee to the date of plan termination. The superintendent may request any other information deemed necessary.

The termination report must be filed with the Pensions Division within 60 days after the date of termination. The date of termination is normally the last date for which contributions have been remitted by the employer, or benefits have been credited.

Authorization by the Plan Sponsor

Many pension plans specifically call for a Board Resolution or plan amendment to terminate the pension plan. If this is the case, the required document must be filed with the Pensions Division. Where no such document is required by the plan, a letter, signed by the plan sponsor authorizing the plan termination must be filed.

Annual Information Return and Filing Fee

Where the plan termination date is effective after the last day of the plan year for which an Annual Information Return has been filed, an additional Return is required. This Return must cover the period from the last Return filed to the date of termination. The full filing fee must be included with the Return.

Step 5 - Approval

Once all required documentation has been filed and found acceptable, the plan termination will be approved and a notice of cancellation of registration will be issued. Until this written notice has been received, the assets of the plan must not be distributed. However, the administrator may pay any benefits to persons entitled to them as those benefits become due.

Step 6 - Disclosure

Within 30 days after the plan administrator has received approval of the termination report from the superintendent, each plan member and former member must be provided with a termination statement.

The termination statement must include all the relevant information listed in section 14 or 15 of the Regulations, as applicable. It must also include,

1. if benefits are to be reduced, the reasons for the reduction and a description of the method of reduction, or

2. if there are surplus assets, how they will be utilized.

Where the employer is seeking a surplus refund, the additional disclosure requirements of section 41 of the Regulations must be met.

Members are entitled to the same options that they would have had, had they terminated their membership on the effective date of termination (i.e. cash refund if not locked-in, locked-in transfer etc.). They must be given at least 90 days after the receipt of their termination statements to make their elections.

Step 7 - Distribution of assets

The distribution of assets must commence immediately after the plan termination has been approved.

In the case of a total plan termination, all assets must be disbursed. The fund cannot continue once the plan has been terminated except as noted below.

Where there are problems locating plan members, we suggest you contact the federal government for assistance at: Human Resources Development Canada, Income Security Program, 8th Floor, Tower "B", Place Vanier, 355 River Road, VANIER, Ontario, KIA OL1.

In the case of a partial plan termination, those assets related to the partial termination must be disbursed. In this case, however, the disbursement may include leaving in the plan those assets related to pensioners and vested deferred members and those active members who elect to receive a deferred pension from the plan.

Under special circumstances, the superintendent will consent to a delay in termination of the pension plan. This consent must be applied for, in writing, with a full explanation as to the need for the delay, and an estimated date as to when termination can be expected to proceed. Continuing the plan solely for the purpose of paying pensions is not an acceptable reason for delaying the termination. Some examples of acceptable reasons are:

1. to avoid a distress sale of assets which would cause a loss to the plan,

2. to settle the issue of surplus ownership, or

3. to complete the funding of a deficit.

The delay must normally be of a short-term nature.

Step 8 - Filing a Termination Return

On completion of the distribution of assets, the plan administrator must file a letter with the superintendent certifying that assets have been allocated and distributed in accordance with the termination report.

For additional information please contact:

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